

COASTAL AND ESTUARINE LAND CONSERVATION  
PROGRAM ACT

---

JULY 31, 2008.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

---

Mr. RAHALL, from the Committee on Natural Resources,  
submitted the following

R E P O R T

[To accompany H.R. 1907]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1907) to authorize the acquisition of land and interests in land from willing sellers to improve the conservation of, and to enhance the ecological values and functions of, coastal and estuarine areas to benefit both the environment and the economies of coastal communities, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Coastal and Estuarine Land Conservation Program Act”.

**SEC. 2. AUTHORIZATION OF COASTAL AND ESTUARINE LAND CONSERVATION PROGRAM.**

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) is amended by inserting after section 307 the following new section:

“AUTHORIZATION OF THE COASTAL AND ESTUARINE LAND CONSERVATION PROGRAM

“SEC. 307A. (a) IN GENERAL.—The Secretary may conduct a Coastal and Estuarine Land Conservation Program, in cooperation with appropriate State, regional, and other units of government, for the purposes of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural, undeveloped, or recreational state to other uses or could be managed or restored to effectively conserve, enhance, or restore ecological function. The program shall be admin-

istered by the National Ocean Service of the National Oceanic and Atmospheric Administration through the Office of Ocean and Coastal Resource Management.

“(b) PROPERTY ACQUISITION GRANTS.—The Secretary shall make grants under the program to coastal states with approved coastal zone management plans or National Estuarine Research Reserve units for the purpose of acquiring property or interests in property described in subsection (a) that will further the goals of—

“(1) a Coastal Zone Management Plan or Program approved under this title;

“(2) a National Estuarine Research Reserve management plan;

“(3) a regional or State watershed protection or management plan involving coastal states with approved coastal zone management programs; or

“(4) a State coastal land acquisition plan that is consistent with an approved coastal zone management program.

“(c) GRANT PROCESS.—The Secretary shall allocate funds to coastal states or National Estuarine Research Reserves under this section through a competitive grant process in accordance with guidelines that meet the following requirements:

“(1) The Secretary shall consult with the coastal state’s coastal zone management program, any National Estuarine Research Reserve in that State, and the lead agency designated by the Governor for coordinating the implementation of this section (if different from the coastal zone management program).

“(2) Each participating coastal state, after consultation with local governmental entities and other interested stakeholders, shall identify priority conservation needs within the State, the values to be protected by inclusion of lands in the program, and the threats to those values that should be avoided.

“(3) Each participating coastal state shall to the extent practicable ensure that the acquisition of property or easements shall not impact working waterfront needs.

“(4) The applicant shall identify the values to be protected by inclusion of the lands in the program, management activities that are planned and the manner in which they may affect the values identified, and any other information from the landowner relevant to administration and management of the land.

“(5) Awards shall be based on demonstrated need for protection and ability to successfully leverage funds among participating entities, including Federal programs, regional organizations, State and other governmental units, landowners, corporations, or private organizations.

“(6) The governor, or the lead agency designated by the governor for coordinating the implementation of this section, where appropriate in consultation with the appropriate local government, shall determine that the application is consistent with the State’s or territory’s approved coastal zone plan, program, and policies prior to submittal to the Secretary.

“(7) Priority shall be given to lands described in subsection (a) that can be effectively managed and protected and that have significant ecological value.

“(8) In developing guidelines under this section, the Secretary shall consult with coastal states, other Federal agencies, and other interested stakeholders with expertise in land acquisition and conservation procedures.

“(9) Eligible coastal states or National Estuarine Research Reserves may allocate grants to local governments or agencies eligible for assistance under section 306A(e).

“(10) The Secretary shall develop performance measures that the Secretary shall use to evaluate and report on the program’s effectiveness in accomplishing its purposes, and shall submit such evaluations to Congress triennially.

“(11) For projects that rank equally under the guidelines, priority shall be given to projects that leverage a higher percentage of non-Federal matching funds.

“(d) LIMITATIONS.—

“(1) A grant awarded under this section may be used to purchase land or an interest in land, including an easement, only from a willing seller.

“(2) All acquisitions of land with a grant under this section shall be made in a voluntary manner and shall not be the result of a forced taking.

“(3) Any interest in land, including any easement, acquired with a grant under this section shall not be considered to create any liability, or have any effect on liability under any other law, of any private property owner with respect to any person injured on the private property.

“(e) PRIVATE PROPERTY PROTECTIONS.—Nothing in this title—

“(1) requires a private property owner to participate in the program under this section;

“(2) requires any private property owner to allow public access (including Federal, State, or local government access) to the private property; or

“(3) modifies the application of any provision of Federal, State, or local law with regard to public access to or use of private property, except as provided

by a voluntary agreement entered into by the owner or custodian of the property.

“(f) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this title modifies the authority of Federal, State, or local governments to regulate land use.

“(g) MATCHING REQUIREMENTS.—

“(1) IN GENERAL.—The Secretary may not make a grant under the program unless the Federal funds are matched by non-Federal funds in accordance with this subsection.

“(2) COST SHARE REQUIREMENT.—

“(A) IN GENERAL.—Grant funds under the program shall require a 100 percent match from other non-Federal sources.

“(B) WAIVER OF REQUIREMENT.—The Secretary may grant a waiver of subparagraph (A) for underserved communities, communities that have an inability to draw on other sources of funding because of the small population or low income of the community, or for other reasons the Secretary deems appropriate and consistent with the purposes of the program.

“(3) OTHER FEDERAL FUNDS.—Where financial assistance awarded under this section represents only a portion of the total cost of a project, funding from other Federal sources may be applied to the cost of the project. Each portion shall be subject to match requirements under the applicable provision of law.

“(4) SOURCE OF MATCHING COST SHARE.—For purposes of paragraph (2)(A), the non-Federal cost share for a project may be determined by taking into account the following:

“(A) The value of land or a conservation easement may be used by a project applicant as non-Federal match, if the Secretary determines that—

“(i) the land meets the criteria set forth in section 2(b) and is acquired in the period beginning 3 years before the date of the submission of the grant application and ending 3 years after the date of the award of the grant;

“(ii) the value of the land or easement is held by a non-governmental organization included in the grant application in perpetuity for conservation purposes of the program; and

“(iii) the land or easement is connected either physically or through a conservation planning process to the land or easement that would be acquired.

“(B) The appraised value of the land or conservation easement at the time of the grant closing will be considered and applied as the non-Federal cost share.

“(C) Costs associated with land acquisition, land management planning, remediation, restoration, and enhancement may be used as non-Federal match if the activities are identified in the plan and expenses are incurred within the period of the grant award, or, for lands described in (A), within the same time limits described therein. These costs may include either cash or in-kind contributions.

“(h) RESERVATION OF FUNDS FOR NATIONAL ESTUARINE RESEARCH RESERVE SITES.—No less than 15 percent of funds made available under this section shall be available for acquisitions benefitting National Estuarine Research Reserves.

“(i) LIMIT ON ADMINISTRATIVE COSTS.—No more than 5 percent of the funds made available to the Secretary under this section shall be used by the Secretary for planning or administration of the program. The Secretary shall provide a report to Congress with an account of all expenditures under this section for fiscal year 2009 and triennially thereafter.

“(j) TITLE AND MANAGEMENT OF ACQUIRED PROPERTY.—If any property is acquired in whole or in part with funds made available through a grant under this section, the grant recipient shall provide—

“(1) such assurances as the Secretary may require that—

“(A) the title to the property will be held by the grant recipient or another appropriate public agency designated by the recipient in perpetuity;

“(B) the property will be managed in a manner that is consistent with the purposes for which the land entered into the program and shall not convert such property to other uses; and

“(C) if the property or interest in land is sold, exchanged, or divested, funds equal to the current value will be returned to the Secretary in accordance with applicable Federal law for redistribution in the grant process; and

“(2) certification that the property (including any interest in land) will be acquired from a willing seller.

“(k) REQUIREMENT FOR PROPERTY USED FOR NON-FEDERAL MATCH.—If the grant recipient elects to use any land or interest in land held by a non-governmental orga-

nization as a non-Federal match under subsection (g), the grant recipient must to the Secretary's satisfaction demonstrate in the grant application that such land or interest will satisfy the same requirements as the lands or interests in lands acquired under the program.

"(l) DEFINITIONS.—In this section:

"(1) CONSERVATION EASEMENT.—The term 'conservation easement' includes an easement or restriction, recorded deed, or a reserve interest deed where the grantee acquires all rights, title, and interest in a property, that do not conflict with the goals of this section except those rights, title, and interests that may run with the land that are expressly reserved by a grantor and are agreed to at the time of purchase.

"(2) INTEREST IN PROPERTY.—The term 'interest in property' includes a conservation easement.

"(m) APPLICATION.—Only States with coastal populations with at least 85 people per square mile may be eligible for grants under this program. For purposes of this subsection, coastal population shall be calculated using the most recent Census Bureau numbers for the population of coastal counties that are wholly or partially within the State's legally defined coastal zones.

"(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section \$60,000,000 for each of fiscal years 2009 through 2013."

#### PURPOSE OF THE BILL

The purpose of H.R. 1907 is to authorize the acquisition of land and interests in land from willing sellers to improve the conservation of, and to enhance the ecological values and functions of, coastal and estuarine areas to benefit both the environment and the economies of coastal communities, and for other purposes.

#### BACKGROUND AND NEED FOR LEGISLATION

Undeveloped coastal areas, such as wetlands, bays and estuaries, barrier islands and maritime forests and meadows, are important both to humans and to resident and migratory wildlife. These natural areas shield us from coastal storms, facilitate flood control, filter pollutants to maintain water quality, and provide access to waterfront areas for recreation. Coastal habitats also shelter fish and shellfish that are important to commercial and recreational fisheries, and provide nesting, foraging and layover areas for many coastal birds. These unique areas in addition sustain numerous animal and plant species, including many rare, threatened and endangered species of plants and wildlife. Unfortunately, many of the nation's coastal areas are under increasing pressures from population growth and related development. For example, more than half of the population of the United States lives in coastal counties, yet these counties comprise just 17 percent of the nation's land area. Furthermore, the rate of land consumption or conversion in coastal metropolitan areas is four or more times greater than the population growth rate. The pressures from growth include increased solid waste production, higher volumes of urban and suburban non-point runoff, loss of green space and wildlife habitat, declines in ambient water quality, and increased demands on wastewater treatment, potable water, and energy supplies. These pressures adversely affect the quality of coastal and marine waters, degrade or fragment associated wildlife habitat, and reduce available open space.

In order to address the present and growing scarcity of coastal open space and wildlife habitat and to preserve future opportunities for coastal outdoor recreation, Congress directed the Secretary

of Commerce to establish a Coastal and Estuarine Land Conservation Program (CELCP) as part of the Commerce, Justice, and State Appropriations Act of 2002 (Public Law 107-77). This program, administered by the National Oceanic and Atmospheric Administration (NOAA), was created “for the purpose of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural or recreational states to other uses.” CELCP provides voluntary matching grants to eligible state coastal management agencies and local governments to acquire property or conservation easements from willing sellers within a state’s coastal zone or coastal watershed boundary. NOAA administers the CELCP program based on guidelines published in the Federal Register in 2003. These guidelines established the eligibility as well as the procedural and programmatic requirements for CELCP, including criteria for financial assistance. The guidelines also outlined the criteria and process for developing state coastal and estuarine land conservation plans and specified a national competitive nominating process for selecting final projects. Between 2002 and 2007, CELCP spent nearly \$200 million to support more than 150 projects in 25 coastal states and territories which has protected more than 35,000 acres of land.

Although subsequent appropriations bills have reauthorized funding for CELCP, the program remains at risk of cancellation without a formal statutory authorization. In addition, in its 2004 report, the U.S. Commission on Ocean Policy formally recommended amending the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*) to authorize a dedicated funding program, such as CELCP, for coastal and estuarine habitat conservation.

#### COMMITTEE ACTION

H.R. 1907 was introduced on April 18, 2007 by Rep. James Saxton (R-NJ). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife and Oceans. On October 24, 2007, the Subcommittee held a hearing on the bill. All the witnesses at the hearing testified in support of the legislation, including representatives of the Administration and the Coastal States Organization.

On February 13, 2008, the Subcommittee met to mark up the bill. Rep. Saxton offered an amendment in the nature of a substitute, which made several technical and clarifying changes, including changing the short title of the bill and revising it to amend the appropriate section (1456(d)) of the Coastal Zone Management Act. The amendment struck all findings and revised section 3 to authorize the Secretary to conduct a program, as opposed to establish a new program, and specified that all CELCP grants will further the goals of state coastal land acquisition plans. The amendment also clarified the conditions by which lands could be used to satisfy federal matching fund requirements, and authorized to appropriate \$60 million per year for the period between Fiscal Years 2009 and 2013. The amendment was adopted by voice vote. The bill was then forwarded as amended to the Full Committee by voice vote.

On June 25, 2008, the Full Natural Resources Committee met to consider the bill. Rep. Saxton offered another amendment in the

nature of a substitute to insert new provisions to protect private property rights, to hold harmless existing legal authorities applying to government access to private property and regulation of land use, and to insert a new limitation on grant eligibility to coastal states with a coastal population of at least 85 people per square mile. The amendment was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section provides that the Act may be cited as the “Coastal and Estuarine Land Conservation Program Act.”

##### *Section 2. Authorization of Coastal and Estuarine Land Conservation Program*

Subsection (a) would amend the Coastal Zone Management Act (16 U.S.C. 1451 et seq.) to insert a new section 307A to authorize the Secretary of Commerce to conduct a Coastal and Estuarine Land Conservation Program, in cooperation with appropriate state, regional and other units of government, for the purposes of protecting important coastal and estuarine areas that have significant conservation value, are threatened by conversion from their natural, undeveloped state, or could be managed or restored to improve ecological function in a coastal area.

Subsection (b) would authorize the Secretary to make grants to coastal states with federally-approved coastal zone management plans or to reserves within the National Estuarine Research Reserve System (NERRS) to acquire property to further the goals of state or regional plans or management plans within the NERRS.

Subsection (c) would direct the Secretary to allocate funds to coastal states or to National Estuarine Research Reserves through a competitive grant process; eligible coastal states and reserves would be authorized to subsequently allocate grants to local governments or other eligible entities. The Secretary would be required to provide program guidelines developed in consultation with state coastal zone management programs and relevant NERRS reserves. Each participating coastal state would be required to identify priority conservation needs, the values to be protected and the threats to those values, and ensure that land acquisition does not impact working waterfront needs. Grant applicants would be required to identify values to be protected, planned management activities, and other landowner information relevant to administration and management of the land. Grant awards would be based on demonstrated need for protection and ability to leverage non-federal funds from participating entities, and priority would be given to lands having significant ecological value that also can be effectively protected and managed. Lastly, the Secretary would be required to develop performance measures to evaluate program effectiveness and report triennially to the Congress.

Subsection (d) would limit the award of grants only to projects that are used to purchase lands from willing sellers, that are con-

ducted on a voluntary basis, or create any liability or have any effect on liability under any other law.

Subsection (e) would state further that nothing in the legislation would require private property owner participation, require a property owner to allow public access to private property, or modify any existing law regarding public access to private property except as allowed by voluntary agreement by the property owner.

Subsection (f) would hold harmless existing governmental authorities to regulate land use.

Subsection (g) would require all grants to meet a 1:1 federal to non-federal matching funds requirement. The Secretary would be allowed to waive match requirements for under-served communities, low income communities, or for other reasons the Secretary deems appropriate. Funding from other federal sources may be applied to the overall cost of a project, and the sources of matching funds would include the value of land or a conservation easement, costs associated with land acquisition, land management planning, remediation, restoration or enhancement, or in-kind contributions. Any grant recipient who elects to use land or an interest in land to satisfy match requirements must demonstrate that the property will satisfy the same requirements as the lands to be acquired with the grant.

Subsection (h) would reserve no less than fifteen percent of funds made available to support acquisitions benefitting the National Estuarine Research Reserve System.

Subsection (i) would limit the Secretary's annual administrative expenses to no more than five percent of the funds made available, and the Secretary would be required to report to the Congress triennially on all expenditures.

Subsection (j) would require grant recipients to assure the Secretary that properties acquired will be held by the grant recipient or other appropriate public agency in perpetuity, that these lands will be managed in a manner consistent with the purposes of this Act, and should the property be sold, exchanged or divested in the future, that funds equal to the current value will be returned to the Secretary for redistribution in the grant process.

Subsection (k) sets out the requirements for property used as a non-federal match.

Subsection (l) defines the terms "conservation easement", and "interest in property".

Subsection (m) would limit eligibility to coastal states with a coastal population of at least 85 people per square mile, and would require the calculation of population density to utilize the most recent Census Bureau numbers for coastal counties located entirely or partially within a state's legally defined coastal zone. Although Members raised questions at the Committee's markup regarding the precise geographic scope of this provision limiting eligibility based on coastal population density, answers for which by the amendment's sponsor remained inconclusive, the effect of the provision is to make at least four states ineligible for participation in CELCP (Alaska, Oregon, Maine and Minnesota).

Subsection (n) would authorize to be appropriated \$60 million per year for the period between Fiscal Years 2009 through 2013.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

#### COMPLIANCE WITH HOUSE RULE XIII

1. **Cost of Legislation.** Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. **Congressional Budget Act.** As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does contain new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. **General Performance Goals and Objectives.** As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is to authorize the acquisition of land and interests in land from willing sellers to improve the conservation of, and to enhance the ecological values and functions of, coastal and estuarine areas to benefit both the environment and the economies of coastal communities, and for other purposes.

4. **Congressional Budget Office Cost Estimate.** Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

#### *H.R. 1907—Coastal and Estuarine Land Conservation Program Act*

Summary: H.R. 1907 would direct the National Oceanic and Atmospheric Administration (NOAA) to establish a program to protect land near coastal areas and estuaries. Under the program, NOAA would make grants to coastal states that wish to purchase eligible lands or other property interests. For that purpose, the bill would authorize the appropriation of \$60 million for each of fiscal years 2009 through 2013.

Assuming appropriation of the authorized amounts, CBO estimates that carrying out the proposed grant program would cost \$240 million over the 2009–2013 period and \$60 million after 2013. Enacting the bill would not affect direct spending or revenues.

H.R. 1907 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1907 is shown in the following table. The costs



of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level .....	60	60	60	60	60	300
Estimated Outlays .....	20	40	60	60	60	240

Basis of estimate: For this estimate, CBO assumes that H.R. 1907 will be enacted near the beginning of fiscal year 2009 and that the entire amount authorized will be appropriated for each of fiscal years 2009 through 2013. Estimated outlays are based on historical patterns for similar grants made by NOAA.

Intergovernmental and private-sector impact: H.R. 1907 contains no intergovernmental or private-sector mandates as defined in UMRA. The grant program authorized by the bill would require matching funds from participating governments. Any costs to those states, including matching funds, would result from complying with conditions for receiving federal assistance.

Previous CBO estimate: On May 7, 2007, CBO transmitted a cost estimate for S. 1142, the Coastal and Estuarine Land Protection Act, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on April 25, 2007. H.R. 1907 and S. 1142 are very similar, but S. 1142 would authorize the appropriation of whatever amounts are necessary for the proposed grant program for each of fiscal years 2008 through 2012, while H.R. 1907 would authorize the appropriation of \$60 million for that purpose for each of fiscal years 2009 through 2013.

Estimate prepared by: Federal costs: Deborah Reis. Impact on State, local, and tribal Governments: Melissa Merrell. Impact on the private sector: MarDestinee C. Perez.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

#### earmark statement

H.R. 1907 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in *italic*

and existing law in which no change is proposed is shown in roman):

## COASTAL ZONE MANAGEMENT ACT OF 1972

### TITLE III—MANAGEMENT OF THE COASTAL ZONE

\* \* \* \* \*

*SEC. 307A. (a) IN GENERAL.—The Secretary may conduct a Coastal and Estuarine Land Conservation Program, in cooperation with appropriate State, regional, and other units of government, for the purposes of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural, undeveloped, or recreational state to other uses or could be managed or restored to effectively conserve, enhance, or restore ecological function. The program shall be administered by the National Ocean Service of the National Oceanic and Atmospheric Administration through the Office of Ocean and Coastal Resource Management.*

*(b) PROPERTY ACQUISITION GRANTS.—The Secretary shall make grants under the program to coastal states with approved coastal zone management plans or National Estuarine Research Reserve units for the purpose of acquiring property or interests in property described in subsection (a) that will further the goals of—*

*(1) a Coastal Zone Management Plan or Program approved under this title;*

*(2) a National Estuarine Research Reserve management plan;*

*(3) a regional or State watershed protection or management plan involving coastal states with approved coastal zone management programs; or*

*(4) a State coastal land acquisition plan that is consistent with an approved coastal zone management program.*

*(c) GRANT PROCESS.—The Secretary shall allocate funds to coastal states or National Estuarine Research Reserves under this section through a competitive grant process in accordance with guidelines that meet the following requirements:*

*(1) The Secretary shall consult with the coastal state's coastal zone management program, any National Estuarine Research Reserve in that State, and the lead agency designated by the Governor for coordinating the implementation of this section (if different from the coastal zone management program).*

*(2) Each participating coastal state, after consultation with local governmental entities and other interested stakeholders, shall identify priority conservation needs within the State, the values to be protected by inclusion of lands in the program, and the threats to those values that should be avoided.*

*(3) Each participating coastal state shall to the extent practicable ensure that the acquisition of property or easements shall not impact working waterfront needs.*

*(4) The applicant shall identify the values to be protected by inclusion of the lands in the program, management activities that are planned and the manner in which they may affect the values identified, and any other information from the landowner relevant to administration and management of the land.*

(5) Awards shall be based on demonstrated need for protection and ability to successfully leverage funds among participating entities, including Federal programs, regional organizations, State and other governmental units, landowners, corporations, or private organizations.

(6) The governor, or the lead agency designated by the governor for coordinating the implementation of this section, where appropriate in consultation with the appropriate local government, shall determine that the application is consistent with the State's or territory's approved coastal zone plan, program, and policies prior to submittal to the Secretary.

(7) Priority shall be given to lands described in subsection (a) that can be effectively managed and protected and that have significant ecological value.

(8) In developing guidelines under this section, the Secretary shall consult with coastal states, other Federal agencies, and other interested stakeholders with expertise in land acquisition and conservation procedures.

(9) Eligible coastal states or National Estuarine Research Reserves may allocate grants to local governments or agencies eligible for assistance under section 306A(e).

(10) The Secretary shall develop performance measures that the Secretary shall use to evaluate and report on the program's effectiveness in accomplishing its purposes, and shall submit such evaluations to Congress triennially.

(11) For projects that rank equally under the guidelines, priority shall be given to projects that leverage a higher percentage of non-Federal matching funds.

(d) LIMITATIONS.—

(1) A grant awarded under this section may be used to purchase land or an interest in land, including an easement, only from a willing seller.

(2) All acquisitions of land with a grant under this section shall be made in a voluntary manner and shall not be the result of a forced taking.

(3) Any interest in land, including any easement, acquired with a grant under this section shall not be considered to create any liability, or have any effect on liability under any other law, of any private property owner with respect to any person injured on the private property.

(e) PRIVATE PROPERTY PROTECTIONS.—Nothing in this title—

(1) requires a private property owner to participate in the program under this section;

(2) requires any private property owner to allow public access (including Federal, State, or local government access) to the private property; or

(3) modifies the application of any provision of Federal, State, or local law with regard to public access to or use of private property, except as provided by a voluntary agreement entered into by the owner or custodian of the property.

(f) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this title modifies the authority of Federal, State, or local governments to regulate land use.

(g) MATCHING REQUIREMENTS.—

(1) *IN GENERAL.*—The Secretary may not make a grant under the program unless the Federal funds are matched by non-Federal funds in accordance with this subsection.

(2) *COST SHARE REQUIREMENT.*—

(A) *IN GENERAL.*—Grant funds under the program shall require a 100 percent match from other non-Federal sources.

(B) *WAIVER OF REQUIREMENT.*—The Secretary may grant a waiver of subparagraph (A) for underserved communities, communities that have an inability to draw on other sources of funding because of the small population or low income of the community, or for other reasons the Secretary deems appropriate and consistent with the purposes of the program.

(3) *OTHER FEDERAL FUNDS.*—Where financial assistance awarded under this section represents only a portion of the total cost of a project, funding from other Federal sources may be applied to the cost of the project. Each portion shall be subject to match requirements under the applicable provision of law.

(4) *SOURCE OF MATCHING COST SHARE.*—For purposes of paragraph (2)(A), the non-Federal cost share for a project may be determined by taking into account the following:

(A) The value of land or a conservation easement may be used by a project applicant as non-Federal match, if the Secretary determines that—

(i) the land meets the criteria set forth in section 2(b) and is acquired in the period beginning 3 years before the date of the submission of the grant application and ending 3 years after the date of the award of the grant;

(ii) the value of the land or easement is held by a non-governmental organization included in the grant application in perpetuity for conservation purposes of the program; and

(iii) the land or easement is connected either physically or through a conservation planning process to the land or easement that would be acquired.

(B) The appraised value of the land or conservation easement at the time of the grant closing will be considered and applied as the non-Federal cost share.

(C) Costs associated with land acquisition, land management planning, remediation, restoration, and enhancement may be used as non-Federal match if the activities are identified in the plan and expenses are incurred within the period of the grant award, or, for lands described in (A), within the same time limits described therein. These costs may include either cash or in-kind contributions.

(h) *RESERVATION OF FUNDS FOR NATIONAL ESTUARINE RESEARCH RESERVE SITES.*—No less than 15 percent of funds made available under this section shall be available for acquisitions benefitting National Estuarine Research Reserves.

(i) *LIMIT ON ADMINISTRATIVE COSTS.*—No more than 5 percent of the funds made available to the Secretary under this section shall be used by the Secretary for planning or administration of the program. The Secretary shall provide a report to Congress with an ac-

count of all expenditures under this section for fiscal year 2009 and triennially thereafter.

(j) *TITLE AND MANAGEMENT OF ACQUIRED PROPERTY.*—If any property is acquired in whole or in part with funds made available through a grant under this section, the grant recipient shall provide—

(1) such assurances as the Secretary may require that—

(A) the title to the property will be held by the grant recipient or another appropriate public agency designated by the recipient in perpetuity;

(B) the property will be managed in a manner that is consistent with the purposes for which the land entered into the program and shall not convert such property to other uses; and

(C) if the property or interest in land is sold, exchanged, or divested, funds equal to the current value will be returned to the Secretary in accordance with applicable Federal law for redistribution in the grant process; and

(2) certification that the property (including any interest in land) will be acquired from a willing seller.

(k) *REQUIREMENT FOR PROPERTY USED FOR NON-FEDERAL MATCH.*—If the grant recipient elects to use any land or interest in land held by a non-governmental organization as a non-Federal match under subsection (g), the grant recipient must to the Secretary's satisfaction demonstrate in the grant application that such land or interest will satisfy the same requirements as the lands or interests in lands acquired under the program.

(l) *DEFINITIONS.*—In this section:

(1) *CONSERVATION EASEMENT.*—The term “conservation easement” includes an easement or restriction, recorded deed, or a reserve interest deed where the grantee acquires all rights, title, and interest in a property, that do not conflict with the goals of this section except those rights, title, and interests that may run with the land that are expressly reserved by a grantor and are agreed to at the time of purchase.

(2) *INTEREST IN PROPERTY.*—The term “interest in property” includes a conservation easement.

(m) *APPLICATION.*—Only States with coastal populations with at least 85 people per square mile may be eligible for grants under this program. For purposes of this subsection, coastal population shall be calculated using the most recent Census Bureau numbers for the population of coastal counties that are wholly or partially within the State's legally defined coastal zones.

(n) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Secretary to carry out this section \$60,000,000 for each of fiscal years 2009 through 2013.

\* \* \* \* \*